


**ADVISORY COMMITTEE ON ROCK CRUSHERS
AND QUARRIES**

DISSENTING REPORT TO GOVERNOR RICK PERRY

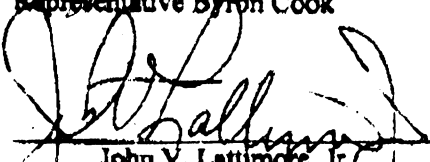
JANUARY -- 2005

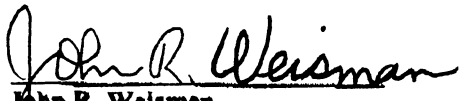
The following recommendations are respectfully submitted by:


Representative Dennis Bannen


Representative Edmund Kuempel


Representative Byron Cook


John V. Lattimore, Jr.


John R. Weisman

FINDINGS AND RECOMMENDATIONS

After careful consideration of the testimony heard by the committee and thoughtful study of the issues involved, the afore-signed committee members offer the following recommendations:

RECOMMENDATION 1: REQUIRE OPERATORS OF ROCK QUARRIES TO MAINTAIN THE FOLLOWING DOCUMENTS:

Site Plan: A copy of the site plan that is submitted to the TCEQ with the permit request shall be available at the quarry site.

Blasting Record: A blasting record should be maintained on the site for a rolling 24-month period. It should include as a minimum the following information:

- The location, time and date of detonation
- The weather conditions during the blast
- Seismograph reading and location of seismograph equipment during the blasting
- Name of the person in charge of the blasting

Air Quality Permit: A copy of the air quality permit issued by the TCEQ shall be available.

Storm Water Permit: A copy of the notice of intent and/or other required storm water permit data shall be available.

RECOMMENDATION 2: GRANT TCEQ ADDITIONAL STATUTORY AUTHORITY TO REGULATE SAND AND GRAVEL MINING ALONG THE RIVERS AND STREAMS OF TEXAS.

Non-permitted dimension stone operations along the Brazos River and its tributaries in Palo Pinto and Parker Counties have adversely changed the river ecology and impacted surface water quality. The mines remove limestone and sandstone from the hills and bluffs above the river for use in landscaping, thus exposing the earth beneath. During heavy rains, the water washes the exposed soil and clay into the river; these materials are deposited along the shore and on small islands in the river, promoting the growth of weeds and grass. Excessive sedimentation can destroy aquatic habitat and high volumes of runoff can cause stream bank erosion. These were not the sole source of materials deposited in the river.

In the Spring of 2004, in response to numerous inquiries by concerned citizens and the Brazos River Conservation Coalition, TCEQ developed a plan to investigate these types of facilities throughout the state ("Clear Streams Initiative"). The TCEQ through its Clear Streams Initiative issued 128 notices of violation, 38 notices of enforcement and six referrals to the Attorney General's office to rock quarry operators.¹ Through this initiative, it has become apparent that the TCEQ should enhance its enforcement procedures, especially with operations operating adjacent to a waterway of the state to ensure that these facilities are operating in compliance with existing state and federal laws.

RECOMMENDATION 3: REQUIRE ALL AGGREGATE TRUCKS TO BE COMPLETELY TARPED.²

All aggregate haul trucks would be tarped regardless of the size of the material being hauled. This would be enforced by the Texas Department of Public Safety. Penalties should be established by the Department of Public Safety and deposited in the Texas Mobility Fund.

RECOMMENDATION 4: PENALTIES FOR OPERATING WITHOUT A PRE-AUTHORIZED PERMIT FOR STORMWATER RUNOFF.³

Require the cessation of operation for any aggregate facility required by law to have a stormwater runoff permit that is operating without a pre-authorized permit for stormwater runoff. The legislature shall review the penalty provisions to assess appropriate penalties for any aggregate facility operating without the required permit from the TCEQ.

RECOMMENDATION 5: CHANGES TO PERMITS BY RULE (PBR) AS THEY APPLY TO ROCK CRUSHERS AND QUARRIES.

The committee recommends that the TCEQ review PBRs for rock crushers and that rules be adopted to close the loophole that allows for facilities to potentially circumvent the permitting process. If TCEQ is unable to resolve this problem through the rule-making process, appropriate legislation should be passed to address the problem.

¹ As of September 15, 2004.

² Recommendation submitted by the Texas Aggregates and Concrete Association.

³ Ibid.

RECOMMENDATION 6: A STUDY TO BE PERFORMED BY THE STATE AUDITOR ON THE ACTUAL COST OF HIGHWAY CONSTRUCTION PROJECTS.

During the first hearing, Mr. Amadeo Saenz (Texas Department of Transportation) testified that "...the type of high quality hard dolomite ... that is currently in high demand in Texas, is primarily located on the fringes of the Llano Uplift Area. If, for example, quarries within this geographic area were restricted from production or operation in any way, the result would greatly impact the availability of this desirable high grade dolomite."⁴

Senator Armbrister then questioned Mr. Saenz as to why TXDOT was limiting construction materials to only certain material types. Mr. Saenz stipulated that the State of Texas has performed research on the differing materials that are potentially involved in highway construction. In reviewing that research, TXDOT determined that "...the State of Texas has a lot of materials, and some materials have been, [through] research ... shown to be better for certain types [of] highways than others."⁵

The study should include complete costs of a highway building project including the quarrying and crushing of the material and the transportation costs associated with the project. The study should also compare costs associated with projects that receive material within a close proximity to their site and those that receive material from a greater distance away.

TRANSPORTATION ISSUES

The committee encourages TxDOT to emphasize the public safety of our motoring public by giving significant attention to the ever-increasing vehicular patterns throughout the state. This is an important concept that should focus on new industrial, commercial, and residential developments as they pervade our state. Special attention should be provided by TxDOT regarding the criteria in building and maintaining our public roadways to ensure a high degree of safety as the transportation needs of our state are increased.

⁴ Testimony of Amadeo Saenz to the Advisory Committee on Rock Crushers and Quarries, March 29, 2004.

⁵ Ibid

RECLAMATION ISSUES

The committee received testimony regarding the need to address the condition of land upon the completion of quarry activities and the future purposes of such land.

Agreements relative to the uses of such land are determined with deference to the private property rights considerations of land owners and/or lessors of property utilized as quarries, and according to lease and/or contractual terms stipulated between the landowner or lessor of the property and the lessee/operator of the quarry.

It is the intent of the advisory committee that quarry operators and aggregate producers operate according to the highest standards and best management practices available. While most aggregate producers maintain high principles and are good stewards of the land, it is important that all quarry operations be held accountable for the condition of the land.

The committee recognizes that reclamation of quarried land will be an issue of increasing concern for the legislature and the regulatory communities and will require further review.

The Advisory Committee members recommend that the 79th Texas Legislature create an interim committee to consider activities and issues related to the reclamation of quarried land. Further, the interim committee should prepare a report of its findings, along with any appropriate legislative recommendations, for the consideration of the 80th Legislature.

TCEQ ENFORCEMENT

TCEQ should ensure that violators face the appropriate consequences. TCEQ must establish penalties that reduce the economic benefit of non-compliance, thereby taking away an important incentive for non-compliance. In order to provide that penalties are paid promptly, interest charges should be assessed on overdue penalties, and the agency should adopt new procedures to collect delinquent fees and penalties. These procedures could include referrals to the Attorney General for collection and the return of permit applications if the applicant has past due fees and penalties.⁶

⁶ Texas Commission on Environmental Quality, *Enforcement Process Review, Draft Final Report*, August 20, 2004.

A poor compliance record should also limit an entity's opportunity to obtain new authorizations. If an applicant has a poor compliance record, the agency would summarily reject, or add conditions designed to ensure compliance.⁷ Penalties should also be enhanced when a violator does not respond to enforcement notices. Compliance history and past violations should be used when considering new permits.

TCEQ should also focus more closely on preventing and reducing risk to human health and the environment. The agency should assign a higher priority and additional agency inspection and enforcement resources to those violators causing harm or that have the potential to cause harm. Inspections should be scheduled based primarily on a facility's potential risk to the environment. Because unauthorized facilities are less likely to install the controls needed to protect the environment, field resources should also be reserved every year to address unauthorized operations. Base penalties for violators that caused actual environmental harm should be increased.⁸

⁷ Ibid.

⁸ Ibid.